

## **REMARKS/ARGUMENTS**

Claims 1-2 are pending in the present application. Claims 1-2 stand rejected. Claims 1-2 have been canceled without prejudice or intent of disclaiming subject matter therein or equivalents thereof. Claims 1-2 have been rewritten as new claims 3-4. Claim 5 has been added. No new matter has been entered. This Amendment is submitted in response to the Office Action dated August 5, 2009. Applicant respectfully requests reconsideration of the pending claims for at least the following reasons.

### **I. STATUS OF THE SPECIFICATION**

Correction is requested to the abstract to be within the range of 50-150 words, for the language to be clear and concise and avoid using phrases which can be implied. Applicant respectfully submits the attached new abstract for entry to the application.

### **II. STATUS OF THE CLAIMS**

In the Office Action, claims 1-2 stand rejected under 35 U.S.C. § 112, second paragraph (hereinafter, "Section 112, Par. 2") for failing to conform with current U.S. practice.

Claim 1 stands rejected under 35 U.S.C. § 102(b) (hereinafter, "Section 102(b)") as being anticipated by Crooks (U.S. Pat. No. 4,477,111, hereinafter referred to as "Crooks").

Claim 2 stands rejected under 35 U.S.C. § 103(a) (hereinafter, "Section 103(a)") as being unpatentable over Crooks in view of German Patent (DE 3823296)

Applicant respectfully traverses all objections and rejections and requests reconsideration of the claims submitted herewith.

### III. REJECTION OF CLAIMS UNDER SECTION 112, PAR. 2

The claims were rejected under Section 112, Par. 2 as being generally narrative and indefinite, failing to conform with current U.S. practice. Applicant respectfully submits rewritten new claims 3-5 which address the grammatical and idiomatic errors in the claims. In particular, upon review of the original Spanish priority document from which the English translation was based upon, the language originally used with regard to “valves” was found to be a translation of the Spanish word “valvas”. The “valves” referred to in the specification identifies the two components forming the capsule. The Spanish word “valvas” may also be translated to the English word “shells” which may better describe the structure of the capsule components. Accordingly, the claims have been corrected to use the term “shell(s)” and is believed to now clarify the language in which the “capsule” comprises two “shells” in which one is a “larger shell” and the other is a “smaller shell”, identified in the Figures as elements 19 and 19’ respectively.

Any other remaining indefinite elements have been removed from the claims and it is therefore believed that claims 3-5 are in conformance with current U.S. practice. Accordingly, Applicant respectfully requests withdrawal of the rejection of the claims under Section 112, Par. 2.

### IV. REJECTION OF CLAIM UNDER SECTION 102(b) CROOKS

Claim 1 was rejected under Section 102(b) as being anticipated by Crooks. Applicant

has rewritten all the claims and submits new claims 3-5 which are believed to be novel and therefore allowable over Crooks. Independent claim 3, upon which all other claims depend, recites in part

“an end sleeve formed on the bottom end of the rod, the end sleeve configured with two diametrical grooves;

a pair of rake elements attached at the bottom end of the rod, the rake elements configured at a top portion to correspondingly pass through the grooves on the end sleeve and attach to a bottom end of the intermediate tube inside the rod, each rake element having parallel side arms provided with protruding interior flaps;

a disposable capsule configured to engage with the pair of rake elements, the capsule comprising two shells, each shell to engage with a corresponding rake element, wherein each shell comprises a flexible housing formed on each side plane of the shell for elastically receiving the flaps from the side arms of a corresponding rake element;...”

Crooks fails to provide for each and every claimed limitation of claim 3 and therefore does not anticipate the claim. In particular the required limitation of “a pair of rake elements” have not be shown in Crooks, in which a “top portion” of the rake elements “pass through the grooves on the end sleeve”. Neither does Crooks show “each rake having parallel side arms provided with protruding interior flaps”. Finally, Crooks nowhere discusses a “capsule comprising two shells, each shell to engage with a corresponding rake element”. Crooks instead teaches a “bag 182” which is far from teaching “each shell comprises a flexible housing formed on each side plane of the shell for elastically receiving the flaps from the side arms...” Therefore, Crooks in no manner teaches each and every claimed limitation of claim 3 as required for a rejection under Section 102(b).

Dependent claims 4-5 depend directly or indirectly from claim 3 and include all the limitations of claim 3. Thus, the dependent claims are allowable for at least the same reasons

as base claim 3, and also for the additional elements they each recite which are not taught by Crooks. Claims 3-5 are thereby believed allowable over Crooks.

Applicant therefore respectfully requests withdrawal of the rejection of the claims under Section 102(b).

V. REJECTION OF CLAIM UNDER SECTION 103(a) CROOKS AND DE3823296

Claim 2 was rejected under Section 103(a) as being unpatentable over Crooks in view of DE3823296. Due to the cancellation of claim 2 and submission of new claims 3-5, the rejection of the claims are believed to be made moot as the claims provide claim limitations which are not taught or suggested by Crooks in combination with DE3823296.

Since the dependent claims include all the limitations of their base claims, the respective dependent claims are believed patentable for at least the same reasons as independent claim 3. Applicant respectfully submits that the claims are allowable over the applied references as not all the claimed limitations of independent claim 3 have been shown to satisfy a prima facie case of obviousness. In particular, DE3823296 fails to provide for the underlying deficiencies in Crooks in teaching each and every claim limitation of independent claim 3. For instance, although DE3823296 shows an opened box, there is no teaching of claimed structure of the disposable capsule in which “a flexible housing formed on each side plane of the shell” that “elastically” receives the flaps from the side arms of the rake element. For at least this reason, claims 3-5 are allowable over Crooks and DE3823296.

Moreover, Crooks in combination with DE3823296 fail to teach or suggest “a first shell having a perimeter flange along its open side, and a larger second shell having internal dimplings along a perimeter edge of its open side for retaining the perimeter flange of the first

shell when the first shell is engaged with the second shell in opposing directions, thereby forming the capsule in a closed position” as recited in claim 4. The required structural limitations of the “two shells” and specified structure of the perimeters of the “first shell” and “larger second shell” for engaging each other, are nowhere taught or suggested by the references cited.

Therefore, Crooks in combination with DE3823296 do not teach each and every claimed limitation as required for a rejection under Section 103(a). Accordingly, Applicant respectfully requests withdrawal of the rejection of the claims under Section 103(a).

#### CONCLUSION

In view of the foregoing, Applicants respectfully submit that all of the pending claims of the present application are now in condition for allowance. Reconsideration and allowance of the present application are therefore earnestly requested. Should the Examiner have any questions regarding the above amendments, the Examiner is invited to telephone Applicant’s representative at the number listed below.

Respectfully submitted,

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